HOUSE BILL No. 1005

DIGEST OF INTRODUCED BILL

Citations Affected: IC 6-3.1-29; IC 22-4-24.5-1.

Synopsis: Life long learning tax credit. Establishes a pilot life long learning tax credit program. Requires the office of the lieutenant governor to conduct a study of the impact of the life long learning tax credit program. Transfers 0.5% in the state fiscal year beginning July 1, 2005, and 1% percent thereafter of the money in the skills 2016 training fund to the state general fund to replace money lost from granting life long learning tax credits.

Effective: July 1, 2005.

Harris T

January 19, 2005, read first time and referred to Committee on Commerce, Economic Development and Small Business.

Introduced

First Regular Session 114th General Assembly (2005)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type.~~

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~*this style type*~~ reconciles conflicts between statutes enacted by the 2004 Regular Session of the General Assembly.

HOUSE BILL No. 1005

A BILL FOR AN ACT to amend the Indiana Code concerning taxation.

Be it enacted by the General Assembly of the State of Indiana:

SECTION 1. IC 6-3.1-29 IS ADDED TO THE INDIANA CODE AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]:

Chapter 29. Life Long Learning Tax Credit

Sec. 1. The general assembly makes the following findings:

(1) A number of counties are experiencing a persistent pattern of high unemployment and underemployment or are otherwise facing a variety of employment challenges related to the dominance of manufacturing or agricultural employment in the area.

(2) It is in the public interest to address the employment challenges facing these counties.

(3) The state needs to experiment with innovative ways to address long standing problems.

(4) The people of Indiana have long recognized the benefits of diffusing knowledge and learning throughout a community.

(5) The general assembly has a constitutional duty to

encourage, by all suitable means, moral, intellectual, scientific, and agricultural improvement.

(6) Research indicates that widespread adoption of the practice of life long learning is necessary to meet the challenges of the working conditions facing these counties.

(7) A study needs to be undertaken to evaluate the extent to which educational tax incentives can spark a culture of life long learning in counties that are experiencing employment challenges.

(8) An efficient and effective way of evaluating and applying educational tax incentives is to establish a pilot program for a small number of counties.

Sec. 2. A pilot life long learning tax credit program is established for individuals that are full-time employees of businesses in the following counties:

(1) Blackford.

(2) Grant.

(3) Howard.

(4) Jefferson.

(5) Orange.

(6) Randolph.

Sec. 3. As used in this chapter, "account" refers to an account that qualifies as a life long learning account under this chapter.

Sec. 4. As used in this chapter, "credit" refers to a life long learning tax credit granted under this chapter against state tax liability.

Sec. 5. As used in this chapter, "educational assistance" means a payment:

(1) by an employer of eligible education expenses incurred by or on behalf of a full-time employee for education of the full-time employee; and

(2) that, at the time of the payment, it is reasonable to believe that the employee will be able to exclude from federal gross income under Section 127 of the Internal Revenue Code.

Sec. 6. As used in this chapter, "eligible education expense" means a payment for education, including tuition, fees, and similar payments, books, supplies, and equipment, other than the following:

(1) Tools or supplies that may be retained by the employee after completion of a course of instruction.

(2) Meals, lodging, or transportation.

(3) Any course or other education involving sports, games, or

hobbies.

Sec. 7. As used in this chapter, "employer" means a corporation, person, or pass through entity that employees at least one (1) full-time employee in a pilot county.

Sec. 8. As used in this chapter, "full-time employee" means an individual who:

(1) is employed for consideration for at least thirty-five (35) hours each week or who renders any other standard of service generally accepted by custom or specified by contract as full-time employment; and

(2) has the individual's principal place of employment in a pilot county.

Sec. 9. As used in this chapter, "office" refers to the office of the lieutenant governor.

Sec. 10. As used in this chapter, "pass through entity" means a:

(1) corporation that is exempt from the adjusted gross income tax under IC 6-3-2-2.8(2);

(2) partnership;

(3) trust;

(4) limited liability company; or

(5) limited liability partnership.

Sec. 11. As used in this chapter, "pilot county" refers to a county listed in section 2 of this chapter.

Sec. 12. As used in this chapter, "plan" refers to a life long learning plan that provides for the payment of educational assistance through an account.

Sec. 13. As used in this chapter, "state tax liability" means a taxpayer's total tax liability that is incurred under:

(1) IC 6-3-1 through IC 6-3-7 (the adjusted gross income tax);

(2) IC 27-1-18-2 (the insurance premiums tax); and

(3) IC 6-5.5 (the financial institutions tax);

as computed after the application of the credits that under IC 6-3.1-1-2 are to be applied before the credit provided by this chapter.

Sec. 14. (a) A full-time employee that makes an employee contribution to an account is eligible for a credit in a taxable year against the employee's state tax liability in the taxable year.

(b) The amount of the credit is equal to the least of the following:

(1) The employee contribution made by a full-time employee to the account in the taxable year.

(2) Five hundred dollars ($500).

(3) The amount of the credits allocated by the office to the employee for the taxable year.

Sec. 15. (a) An employer that makes an employer matching contribution to an account is eligible for a credit in a taxable year against the employee's state tax liability in the taxable year.

(b) The amount of the credit is equal to the amount determined under STEP THREE of the following formula:

STEP ONE: Determine the lesser of the following for each account:

(A) The employer contribution made to the account of a full-time employee in the taxable year.

(B) Five hundred dollars ($500).

STEP TWO: Determine the sum of the STEP ONE amounts.

STEP THREE: Determine the lesser of the following:

(A) The STEP TWO amount.

(B) The amount of the credit allocated by the office to the employer for the taxable year.

Sec. 16. (a) If:

(1) a pass through entity does not have state income tax liability against which the credit provided by this chapter may be applied; and

(2) the pass through entity would be eligible for a credit under this chapter if the pass through entity were a taxpayer;

a shareholder, partner, or member of the pass through entity is entitled to a credit under this chapter.

(b) Subject to this chapter, the amount of the credit to which a shareholder, partner, or member is entitled is equal to:

(1) the credit determined for the pass through entity for the taxable year as if the pass through entity were a taxpayer with state tax liability in the amount of the credit; multiplied by

(2) the percentage of the pass through entity's distributive income to which the shareholder or partner is entitled.

Sec. 17. (a) If the amount of the credit provided under this chapter for a taxpayer in a taxable year exceeds the taxpayer's state tax liability for that taxable year, the taxpayer may carry the excess over to subsequent taxable years until the entire credit is used. The amount of the credit carryover from a taxable year shall be reduced to the extent that the carryover is used by the taxpayer to obtain a credit under this chapter for any subsequent taxable year.

(b) A taxpayer is not entitled to a carryback or refund of any unused credit.

Sec. 18. To receive the credit, a taxpayer must claim the credit on the taxpayer's annual state tax return or returns in the manner prescribed by the department. The taxpayer shall submit to the department the information that the department determines is necessary for the department to determine whether the taxpayer is eligible for the credit.

Sec. 19. To qualify as a life long learning plan under this chapter, the plan must meet all of the following criteria:

(1) Be in writing.

(2) Cover at least all full-time employees of the employer.

(3) Provide for the establishment of an account for each full-time employee to which:

(A) a qualified full-time employee makes contributions for the payment of eligible education expenses; and

(B) the employer makes matching contributions on a dollar for dollar basis for the purpose of paying eligible education expenses.

However, the plan may limit the maximum amount that the employer must match. The limitation must uniformly apply to all full-time employees of the employer.

(4) Subject to sections 20 and 21 of this chapter, provide that the account may be used only to pay eligible education expenses incurred by or on behalf of a full-time employee for education selected at the sole discretion of the full-time employee.

(5) Provide that the account will be administered in a manner that qualifies the employer contributions as educational assistance under Section 127 of the Internal Revenue Code.

(6) Provide that the availability of the plan does not reduce or substitute for any other education program provided by the employer, including the provision, by an employer, of courses of instruction for the employer's full-time employees (including books, supplies, and equipment).

(7) Provide procedures for dissemination of information about the plan, including the federal and state income tax consequences of the plan.

(8) Provide for reporting to the department of the information prescribed by the department.

(9) Provide procedures for the allocation of credits certified by the office for the employer's full-time employees among the employer's full-time employees.

(10) Be certified by the office as a plan.

Sec. 20. (a) To qualify as a life long learning account under this chapter, the account must meet all the following criteria:

(1) Be established and administered in accordance with a plan.

(2) Subject to this section and section 21 of this chapter, be used only to pay eligible education expenses incurred by or on behalf of a full-time employee for education selected at the sole discretion of the full-time employee.

(b) Money in an account that is contributed by a full-time employee is held in trust for the employee. A full-time employee may withdraw the full-time employee's contribution to the account at any time for any purpose. However, if the amount is not withdrawn to:

(1) pay eligible education expenses; or

(2) transfer the money in the manner prescribed by the department to the account of another employer;

the individual forfeits any tax benefit that the individual received under this chapter for the amount withdrawn. The department shall prescribe a method for recovery of the tax benefit in the taxable year in which the event causing the forfeiture of the tax benefit occurs.

Sec. 21. (a) Subject to this section, a tax benefit received by an employer under this chapter is forfeited with respect to an employer contribution to an account that is not used to pay eligible education expenses incurred by or on behalf of a full-time employee for education selected at the sole discretion of the full-time employee. The department shall prescribe a method for recovery of the tax benefit in the taxable year in which the event causing the forfeiture of the tax benefit occurs.

(b) Transfer of an unused employer contribution as an employer contribution to another account does not result in forfeiture of a tax benefit received under this chapter. However, the employer is not eligible for an additional credit for the amount transferred.

(c) If the failure to use money in an account as provided in subsection (a) is due to the termination of the plan by the employer, in addition to forfeiture of the tax benefit provided by this chapter, the employer is subject to a penalty equal to ten percent (10%) of the tax benefit received by the employer for the amount.

Sec. 22. Adjusted gross income does not include money earned on the balance of an account. If a taxpayer's tax benefits are forfeited under this chapter or the account is terminated, the money excluded from adjusted gross income shall be apportioned

between the employer and the employer's full-time employee in proportion to the relative contributions made by the employer and the employer's full-time employee. The taxpayer's share of the money earned on the account shall be included in adjusted gross income of the taxpayer in the taxable year that the remainder of the forfeited tax benefit is included in adjusted gross income.

Sec. 23. A taxpayer that receives a credit for a contribution to an account is not entitled to a separate deduction for an eligible education expense in the taxable year that the eligible education expense is paid from the account. If the taxpayer deducted the eligible education expense in computing:

(1) federal adjusted gross income; or

(2) for purposes of IC 6-3:

(A) federal taxable income (as defined in Section 63 of the Internal Revenue Code) in the case of corporations;

(B) federal life insurance company taxable income (as defined in Section 801 of the Internal Revenue Code) in the case of life insurance companies (as defined in Section 816(a) of the Internal Revenue Code) that are organized under Indiana law;

(C) federal taxable income (as defined in Section 832 of the Internal Revenue Code) in the case of insurance companies subject to tax under Section 831 of the Internal Revenue Code and organized under Indiana law; or

(D) federal taxable income (as defined for trusts and estates in Section 641(b) of the Internal Revenue Code) in the case of trusts and estates;

the taxpayer shall add the amount of the deduction back in determining state adjusted gross income under IC 6-3-1-3.5 and IC 6-5.5-1-2.

Sec. 24. The office shall establish a program to provide information to employers and full-time employees about the life long learning tax credit program established by this chapter.

Sec. 25. (a) The office shall establish a program to certify employer and employee contributions to an account as eligible for a credit. The program must provide that the employer applies for the credits on behalf of the employer and the employer's full-time employees. The program may permit an application to be made that covers more than one (1) taxable year.

(b) The total amount of credits approved in a state fiscal year may not exceed the amount transferred in the state fiscal year from the skills 2016 training fund to the state general fund under

IC 22-4-24.5-1(c). Qualifying applicants for a credit that apply to the office in the manner and in the form prescribed by the office shall be certified for a credit in the amount that the applicant estimates will be contributed to the accounts of full-time employees in the order in which the applicants apply to the office until the maximum amount of credits allowed under this section for a state fiscal year has been allocated among qualifying applicants. The certification may cover more than one (1) taxable year and need not match the state fiscal year of the transfer from the skills 2016 training fund to the year the credit is taken. However, the office may provide a procedure for an applicant that is denied a tax credit solely as a result of the cap imposed by this subsection to be given priority in the award of a credit in a subsequent state fiscal year. An award of the credit must indicate the part of the award that is for employer contributions and the part of the award that is available to full-time employees for employee contributions.

(c) The certification of a credit under this section applies only to contributions made after the date of the certification.

(d) If the credits allocated to an employer or a full-time employee are not used as provided in the certification, the office may reallocate the unused credits to another qualified applicant in the order in which qualifying applicants are filed with the office.

Sec. 26. (a) The office shall provide for a study of the life long learning tax credit program established by this chapter. The evaluation must include a fiscal analysis of the program, including an assessment of the effectiveness of the provisions of this chapter to:

(1) retain jobs;

(2) increase income; and

(3) increase the tax base;

in the pilot counties. The study must measure the extent to which life long learning practices are increased in the pilot counties. The analysis may include a review of the practices and experiences of other states or political subdivisions with laws similar to this chapter.

(b) The department shall require employers applying for a credit under this chapter to provide the information that the office determines is necessary to carry out the study required by this section.

(c) The office shall report to the legislative council, not later than November 1 of each year in an electronic format under IC 5-14-6, on the progress of its study.

SECTION 2. IC 22-4-24.5-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 1. (a) The skills 2016 training fund is established to do the following:

(1) Administer the costs of the skills 2016 training program established by IC 22-4-10.5.

(2) Undertake any program or activity that furthers the purposes of IC 22-4-10.5.

(3) Refund skills 2016 training assessments erroneously collected and deposited in the fund.

(b) ~~Fifty-five~~ **Fifty-four** percent ~~(55%)~~ **(54%)** of the money in the fund shall be allocated to the state educational institution established under IC 20-12-61. The money so allocated to that state educational institution shall be used as follows:

(1) An amount to be determined annually shall be allocated to the state educational institution established under IC 20-12-61 for its costs in administering the training programs described in subsection (a). However, the amount so allocated may not exceed fifteen percent (15%) of the total amount of money allocated under this subsection.

(2) After the allocation made under subdivision (1), fifty percent (50%) shall be used to provide training to participants in joint labor and management building trades apprenticeship programs approved by the United States Department of Labor's Bureau of Apprenticeship Training.

(3) After the allocation made under subdivision (1), fifty percent (50%) shall be used to provide training to participants in joint labor and management industrial apprenticeship programs approved by the United States Department of Labor's Bureau of Apprenticeship Training.

(c) One percent (1%) of the money in the fund shall be transferred to the state general fund to replace revenue lost as the result of life long learning credits granted under IC 6-3.1-29.

~~(c)~~ **(d)** The remainder of the money in the fund shall be allocated as follows:

(1) An amount to be determined annually shall be set aside for the payment of refunds from the fund.

(2) The remainder of the money in the fund after the allocations provided for in ~~subsection~~ **subsections** (b) **and (c)** and subdivision (1) shall be allocated to other incumbent worker training programs.

~~(d)~~ **(e)** The fund shall be administered by the board. However, all disbursements from the fund must be recommended by the incumbent

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workers training board and approved by the board as required by IC 22-4-18.3-6.

~~(e)~~ **(f)** The treasurer of state shall invest the money in the fund not currently needed to meet the obligations of the fund in the same manner as other public money may be invested. Interest that accrues from these investments shall be deposited in the fund.

~~(f)~~ **(g)** Money in the fund at the end of a state fiscal year does not revert to the state general fund.

~~(g)~~ **(h)** The fund consists of the following:

(1) Assessments deposited in the fund.

(2) Earnings acquired through the use of money belonging to the fund.

(3) Money received from the fund from any other source.

(4) Interest earned from money in the fund.

(5) Interest and penalties collected.

~~(h)~~ **(i)** All money deposited or paid into the fund is appropriated annually for disbursements authorized by this section.

~~(i)~~ **(j)** Not later than April 30 each year, the department shall prepare an annual report that shows the amount of unobligated money in the fund on that date.

~~(j)~~ **(k)** The incumbent workers training board may reallocate the unobligated money shown in the annual report required by subsection ~~(i)~~ **(j)** in accordance with subsections (b) and ~~(c)(2).~~ **(d)(2).**

~~(k)~~ **(l)** Any balance in the fund does not lapse but is available continuously to the department for expenditures consistent with this chapter.

SECTION 3. [EFFECTIVE JULY 1, 2005] **IC 6-3.1-29, as added by this act, applies only to taxable years beginning after December 31, 2005.**